

**Before the Federal Communications Commission
Washington, DC 20554**

IN THE MATTER OF)	
)	
FEDERAL-STATE JOINT BOARD ON)	CC DOCKET NO. 96-45
UNIVERSAL SERVICE)	

**INITIAL COMMENTS OF THE MISSOURI PUBLIC COUNSEL IN RESPONSE TO
THE NOTICE OF PROPOSED RULEMAKING AND ORDER**

I. Introduction

In the Notice of Proposed Rulemaking and Order (NPRM) the Federal Communications Commission sought comment on issues from the *Ninth Report and Order*¹ remanded by the United States Court of Appeals for the Tenth Circuit.² In particular, the Commission sought comment on three findings of the 10th Circuit; the Commission did not (1) define adequately the key statutory terms “reasonably comparable” and “sufficient”; (2) adequately explain setting the funding benchmark at 135 percent of the national average; (3) provide inducements for state universal service mechanisms

The Missouri Public Counsel (MOPC) is a State agency charged with representing the interest of Missouri’s investor owned utility consumers. We appreciate the opportunity to comment on the issues remanded to the Commission for further consideration.

The Telecommunications Act of 1996 directed that consumers in all regions should have access to reasonably comparable services at rates that are also reasonably comparable. It also directed that the new federal support mechanism, among other requirements, be sufficient to preserve and advance universal service. In the past six years, the Commission and numerous state commissions have adopted principles and implemented targeted mechanisms in an effort to fulfill their joint role in achieving the preservation and advancement of universal service. The 10th Circuit Remand did not indicate that the Court believes that these efforts are incorrect or insufficient. Instead, the Court appeared frustrated by the lack of criteria and relevant data by which to judge the appropriateness and sufficiency of current support mechanisms. In these comments, MOPC applauds the Commission’s efforts to develop a record that addresses these

¹ *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).

² *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

deficiencies head-on by working to establish specific definitions, reviewing the support for a 135% national average cost benchmark, and investigating potential state inducement mechanisms. As an integral part of the process, MOPC believes that the Commission should also gather and evaluate data that will gauge the success of current mechanisms and form a factual basis in support of the Commission's further actions including those regarding state inducements.

II. Summary of Recommendations

MOPC suggests that the Commission:

- A. adopt a definition of "reasonably comparable" based on a level of differences of means that is not statistically significant at a specified level of confidence.
- B. determine that this definition of reasonably comparable be applied to a dollars-per-unit value of the calling scope. This measure of value should reflect the mandatory recurring dollars spent by the consumer to maintain universal service. This measure should reflect calling scopes but with the recognition that value may increase at a declining rate as the size of the calling scope increases. The measure should also recognize all mandatory recurring charges required to retain universal service including, but not limited to, flat rate basic local service charges or the estimated charges for a specified minimum level of local calling where applicable, touch-tone charges if mandatory, mandatory EAS charges, the SLC, any mandatory number portability charge and any rate reductions associated with a direct flow-through of high cost universal service support. Other elements, for example taxes and deaf relay charges although appropriately included may produce insignificant insight into differences relative to the burden of including them in the analysis.
- C. gather data necessary to evaluate the reasonable comparability of universal service as it pertains to distinctions of urban versus rural geographic areas, rural versus non-rural companies, in-state and across states.
- D. adopt a definition of "sufficiency" based on a determination of whether reasonable comparability exists. While ultimately the goal is to ensure that in concert federal and state universal service efforts are sufficient, the sufficiency of specific universal service mechanisms could be evaluated independently in order to identify "weak links" and targeted remedies where deficiencies exist.
- E. evaluate independently whether the 135% benchmark produces reasonably comparable costs to be recovered by state rates. The Court did not reject the concept of the 135% benchmark and recognized a joint federal and responsibility for sufficient universal service mechanisms. MOPC views evaluating the sufficiency of interstate support as one step in a multi-step process of evaluating the combined sufficiency of universal service efforts. In addition, the Commission should seek evidence that states have the internal ability to produce reasonably comparable rates with funding above 135%.

- F. look at alternatives if the 135% is found sufficient or insufficient. If the Commission finds that interstate support above 135% is sufficient, but that universal service rates are not comparable, there would be justification for establishing state inducements. If on the other hand funding above 135% is found to be insufficient or states are likely to be unable to generate revenues to establish reasonably comparable rates for universal service then the Commission should consider efforts to target additional support where needed.
- G. look to inducements to promote reasonably comparable rural/urban rates of the objectives of universal service. As noted by the Commission, states have the ultimate authority for determining intra-state rates. Federal inducements should not attempt to mandate these rates. Non-intrusive inducements could include a period during which the Commission identifies recommended practices such as encouraging states to seek methods for expanding rural local calling scopes through consolidating rate centers or implementing mandatory EAS where appropriate. Significantly increasing calling scopes in exchange for marginal additions to rates would work to produce more reasonably comparable rates. Reporting by state the measures used to determine reasonable comparability, might encourage states to evaluate the sufficiency of their universal service mechanisms if their results appear to deviate significantly from other states. The Commission could also encourage states to seek more rigorous demonstrations that universal service support is being used as the law intended.
- H. refrain from using intrusive inducements for the states. MOPC wants to consider the proposals offered by other parties and so we decline to recommend that the Commission develop more intrusive types of inducements at this time. Without evidence that state efforts are not producing sufficient internal mechanisms, it would be premature to impose potentially time consuming and costly requirements on states.

These recommendations appear to address the concerns raised by the 10th Circuit. MOPC requests that the Commission consider these proposals in determining appropriate actions in response to the Court's directives

III. Comments

1. Definition of "reasonably comparable and sufficiency."

A definition of "reasonably comparable" should be based on a no more than a selected level of differences in means between relevant samples. Using a statistically based definition is beneficial because it facilitates empirical testing of data.

Section 254(b) of the Act in part indicates that rates in rural, insular and high cost areas should be compared to rates in urban areas to determine reasonable comparability. However, also important is the directive that the service associated with those rates be reasonably comparable.

The Court required the FCC to define "reasonable comparable" more precisely in a way that could be reasonably related to the statutory principles. Since the statutory principles

indicate that the standard applies to rates for similar services, it would be insufficient to simply compare rates without reflecting on how similar is the underlying service.

While other factors may also be significant, calling scope should be a major consideration in evaluating the standard for “reasonable comparability” of universal service. MOPC suggests that an evaluation of reasonably comparable be applied to a measure of value per mandatory recurring dollar spent (VMRS) by the consumer to maintain universal service. This measure should reflect calling scope but with the recognition that value may increase at a declining rate as the size of the calling scope increases.

The measure should also recognize all mandatory recurring charges required to retain universal service including, but not limited to, flat rate basic local service charges or the estimated charges for a specified minimum level of local calling where applicable, touch-tone charges if mandatory, mandatory EAS charges, the SLC, any mandatory number portability charge and any rate reductions associated with a direct flow-through of high cost universal service support. Recognizing the minimum mandatory charges a consumer must bear to retain service is the most appropriate method for identifying what a consumer must pay for universal service. Other elements, such as taxes and deaf relay charges although appropriately included may produce insignificant insight into differences relative to the burden of including them in the analysis.

MOPC believes that the VRMS should be compared based on distinctions of urban versus rural geographic areas, rural versus non-rural companies, in-state and across states. Gathering appropriate and sufficient data necessary to evaluate the reasonable comparability of universal service within these classifications may take time and effort, but it is essential in the effort to evaluate both reasonable comparability and sufficiency.

MOPC has reviewed a report prepared by the United States General Accounting Office that broached the issue of what and how to collect data to make comparisons between urban and rural rates. The study focused on drawing conclusions regarding differentials between geographically defined rural, suburban and urban areas on a national level. MOPC believes that the approach could be used as a foundation for the development of additional studies targeted at answering more specific questions relevant to evaluating “reasonable comparable” and “sufficiency.”

Building on the conceptual framework of the GAO Study, MOPC has been developing variations that incorporate samples based on exchange calling scope size and whether the provider is a rural or non-rural company. The sampling technique can be adapted to produce valid tests of the significance of the relevant factors. MOPC believes that the study can also be modified to factor in variables, such as density as an indicator of urban versus rural. The preliminary results of MOPC’s study indicate that when rates alone are considered, there are statistically differences; the larger the calling scope, the larger the rate. If instead, the study also considered the value of a calling scope as a surrogate for jointly considering rates and the similarity of the underlying service then the results are statistically significant that the value per dollar is lower for rural consumers. This general observation is consistent with the Rural Taskforce finding that customers that in more rural areas pay more. When the final review of this study is complete, MOPC will provide the Commission with its results.

A definition of “sufficiency” should be based on a determination of whether reasonable comparability exists. While ultimately the goal is to ensure that federal and state universal

service efforts are sufficient in concert, the sufficiency of specific universal service mechanisms could be evaluated independently in order to identify “weak links” and targeted remedies where deficiencies exist. MOPC does not believe that, if it is determined that high-cost support results in rural rates that are reasonably comparable to urban rates, then the level of support is sufficient under section 254 of the Act. If however, it is found that the rates for similar services are reasonably comparable and the rates are affordable that would demonstrate sufficiency of the high cost mechanism in preserving and advancing universal service.

2. Failure To Justify 135% Benchmark

The 10th Circuit Court of Appeals criticized the Commission’s Ninth Order for using a 135% benchmark as sufficient support to produce reasonable comparison of urban and rural rates because the Commission did not reference the data of rural and urban averages that the Commission said it relied upon. The Commission needs to provide an adequate record and a detailed reasoning to support any benchmark it uses.

To this end, MOPC encourages the Commission to evaluate independently whether the 135% benchmark produces reasonably comparable costs to be recovered by state rates. It is not necessary to abandon that 135% benchmark as the Court did not reject the concept. It also recognized that there is a joint federal and responsibility for sufficient universal service mechanisms. The MOPC views evaluating the sufficiency of interstate support as one step in a multi-step process of evaluating the combined sufficiency of universal service efforts. It is also vital that the Commission seek evidence that states have the internal ability to produce reasonably comparable rates with funding above 135%.

The Commission should not close its eyes to looking at alternative courses of action if the investigation produces data that indicates that the 135% is either sufficient or insufficient. If the Commission finds that interstate support above 135% is sufficient, but that universal service rates are not comparable, this could serve as a take off point to see if there is sufficient justification for establishing state inducements. If on the other hand funding above 135% is found to be insufficient or the investigation finds that the states are unlikely to be able to generate revenues to establish reasonably comparable rates for universal service, then the Commission should consider efforts to target additional support where needed.

3. Lack of State Inducements

The Commission is also charged with looking at whether inducements are needed to promote reasonably comparable rural/urban rates of the objectives of universal service. As noted by the Commission, states have the ultimate authority for determining intra-state rates. Federal inducements should not attempt to mandate these rates. Non-intrusive inducements could include a period during which the Commission identifies recommended practices such as encouraging states to seek methods for expanding rural local calling scopes through consolidating rate centers or implementing mandatory EAS where appropriate. Significantly increasing calling scopes in exchange for marginal rate adjustments may generate more reasonably comparable rates. If the Commission compiles and reports on the measures used by

the states to determine reasonable comparability, this could provide a tool for states and may encourage states to evaluate the sufficiency of their universal service mechanisms if their results appear to deviate significantly from other states. The Commission could also encourage states to seek more rigorous demonstrations that universal service support is being used as the law intended. The Commission should refrain from using intrusive inducements for the states. This seems inconsistent with the federal-state joint effort to promote universal service and should allow the innovation, local focus, and flexibility that the “laboratory of the states” can provide. MOPC wants to consider any proposals filed by other commentators before it can even recommend consideration of more intrusive types of inducements at this time. Without evidence that state efforts are not producing sufficient internal mechanisms, it would be premature to impose potentially time consuming and costly requirements on states.

IV. Conclusion

MOPC appreciates the opportunity to comment on the proposed rules. This Office has been involved in promoting the goals of universal service and offers its comments to assist the Commission carryout its duties and to address the deficiencies identified by the 10th Circuit Court of Appeals. MOPC hopes its comments are helpful and asks the Commission give them due consideration.

Respectfully submitted,

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